

1 THE HONORABLE ROBERT S. LASNIK
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10 UNITED STATES DISTRICT COURT
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12 JAMES MCDONALD,
13 Plaintiff,
14 v.
15 ONEWEST BANK, FSB, NORTHWEST
16 TRUSTEE SERVICES, INC., MORTGAGE
17 ELECTRONIC REGISTRATION SYSTEMS,
18 INC., INDYMAC BANK FSB, DOES 1-50,
19 Defendants.

No. 2:10-cv-01952-RSL

DECLARATION OF JULIE R. VACURA
IN SUPPORT OF RESPONSE TO
PLAINTIFF'S COUNTERMOTION TO
COMPEL DISCOVERY REGARDING
AUTHENTICITY OF THE NOTE

I, Julie R. Vacura, declare as follows:

1. I am a partner at the law firm of Larkins Vacura LLP and one of the attorneys
2 responsible for representing OneWest Bank, FSB ("OneWest Bank") in the above captioned
3 case. I am competent to make the statements in this Declaration, which I am making in support
4 of the Response to Plaintiff's Countermotion to Compel Discovery Regarding Authenticity of
5 the Note. These statements are based on my own personal knowledge.

2. On March 12, 2013, counsel for plaintiff, Ha Dao, sent an email seeking

DECLARATION OF JULIE R. VACURA IN SUPPORT OF
RESPONSE TO PLAINTIFF'S COUNTERMOTION TO COMPEL
DISCOVERY REGARDING AUTHENTICITY OF THE NOTE,
AND FOR SANCTIONS, 2:10-cv-01952-RSL, page 1

LARKINS VACURA LLP
621 SW Morrison St., Suite 1450
Portland, Oregon 97205
503-222-4424

1 depositions of 13 people. Attached hereto and marked Exhibit A is a true and correct copy of
2 that email. I initially responded that the depositions were beyond the scope of the Court's
3 Order Continuing Trial Date and Reopening Discovery (Docket #237). Within an hour I
4 advised Ms. Dao I was mistaken and that I would look into the OneWest witnesses requested.
5 Attached hereto and marked Exhibit B is a true and correct copy of that email exchange.

6 3. On March 19, Ms. Dao and I exchanged emails and spoke over the phone
7 regarding the proposed deponents and what were the bases for the depositions. On March 22,
8 Ms. Dao sent me an email in that regard. Attached hereto and marked Exhibits C and D are
9 true and correct copies of those email exchanges.

10 4. On March 26, I sent Ms. Dao an email in which I stated that OneWest agreed
11 that three of the requested witnesses were appropriate under the Court's Order but that three
12 others were beyond the scope of the Order. She and I further discussed logistics for the
13 depositions, including dates and locations for those depositions on which we agreed. Attached
14 hereto and marked Exhibit E is a true and correct copy of that email exchange.

15 5. On March 27, Ms. Dao sent me an email stating that she continued to disagree
16 with my position on which OneWest employees were subject to being deposed under the
17 Court's Order. I suggested she issue notices for all witnesses in the event we could come to
18 agreement. Later that day I sent another email explaining in detail the position of OneWest on
19 the employees whose depositions were requested. Attached hereto and marked Exhibit F is a
20 true and correct copy of these email exchanges.

21 6. Up through the date of this declaration, Ms. Dao and I continue to discuss dates
22 for the agreed-upon depositions, how they will be conducted (by phone or in person), and
23 whether to serve subpoenas or notices. I have made every effort to come to agreement on *all*
24 the witnesses and I believe Ms. Dao and I have worked in good faith to reach a compromise but
25 simply interpret differently the Order at issue.

26 7. Ms. Dao and I have never conferred regarding the depositions she requested of

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RESPONSE TO PLAINTIFF'S COUNTERMOTION TO COMPEL
DISCOVERY REGARDING AUTHENTICITY OF THE NOTE,
AND FOR SANCTIONS, 2:10-cv-01952-RSL, page 2

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1 attorneys from RCO Legal, P.S. (“RCO”), in person, by phone or by email. In her March 13
2 email to me, Exhibit B, she noted the subject matter she wished to cover. I did not respond to
3 that statement and after that email we never again touched on those depositions in any way.

4 8. On April 1, Ms. Dao filed plaintiff’s Response to Defendant OneWest’s Motion
5 to Schedule Expert Discovery & Countermotion to Compel Discovery Regarding Authenticity
6 of the Note. I was surprised to find she was objecting to the motion by OneWest to schedule
7 expert discovery: prior to filing OneWest’s motion Joe Mueller of Larkins Vacura and I had a
8 phone conference with Ms. Dao about the motion and she stated plaintiff did not object to
9 OneWest seeking to schedule expert discovery or the dates being proposed.

10 The foregoing statements are made under penalty of perjury on April 5, 2013, at
11 Portland, Oregon.

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13 LARKINS VACURA LLP
14
15 /s/ Julie R. Vacura
16 Julie R. Vacura
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DECLARATION OF JULIE R. VACURA IN SUPPORT OF
RESPONSE TO PLAINTIFF’S COUNTERMOTION TO COMPEL
DISCOVERY REGARDING AUTHENTICITY OF THE NOTE,
AND FOR SANCTIONS, 2:10-cv-01952-RSL, page 3

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Julie Vacura

From: Ha Dao <hadaojd@gmail.com>
Sent: Tuesday, March 12, 2013 5:16 PM
To: Julie Vacura; Joe Mueller; Heidi Buck Morrison; James McDonald
Subject: DEPOSITION SCHEDULE

Follow Up Flag: Follow up
Flag Status: Flagged

Counsel, my client and I would like to work out a schedule for deposition of the following witnesses:

For April

Heidi Buck Morrison, Esq.
Melissa Williams Romeo, Esq.
Mark Moburg, Esq.
Vonnie McElligott
Jeff Stenman

For May

Charles Boyle
Erica Johnson-Seck
Brian Burnett
Rebecca Marks
Suchann Murray
JC San Pedro
Chamagne Williams
Chris Corcoran

Please advise of your availability as soon as practicable and whether you would accept service of subpoenas on the witnesses' behalf.

I appreciate your cooperation in getting these depositions scheduled.

--
Ha Thu Dao, Esq.
Licensed to practice in FL & WA
AV rated
Member of NACA & NACBA
Grad of the Max Gardner's Litigation Boot Camp
Direct Phone: (727) 269-9334
Direct Fax: (727) 264-2447

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Julie Vacura

From: Ha Dao <hadaojd@gmail.com>
Sent: Wednesday, March 13, 2013 11:01 AM
To: Julie Vacura; Heidi Buck Morrison; Chuck Katz; "James cDonald
Subject: Re: DEPOSITION SCHEDULE

Julie. That is all we're trying to get to. I would like for you to understand that by proposing to depose RCO's lawyers, I just want to ascertain the basis of their personal knowledge of the origin and location of the original note. I will not infringe upon any attorney-client or work-product material so these depos will be extremely brief.

Given our collective crazy schedule, I want to work with you in earnest to get these matters out of the way. I hope to get your reciprocity toward this goal.

On Tue, Mar 12, 2013 at 5:07 PM, Julie Vacura <jvacura@larkinsvacura.com> wrote:

Ha – Since my last email to you, I have gone back and looked at the court's order again regarding discovery related to the note. I interpret it to allow for discovery of OneWest witnesses that may have knowledge about that issue. I will speak to those witnesses listed in your email and determine which of them has any knowledge about the original note or copies of the original note and let you know who they are. I should be able to get back to you in the next several days.

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Julie R. Vacura

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From: Ha Dao [mailto:hadaojd@gmail.com]
Sent: Tuesday, March 12, 2013 5:40 PM
To: Julie Vacura
Cc: James McDonald
Subject: Re: DEPOSITION SCHEDULE

Julie, please refer to the judge's orders issued last week. I am sure if you don't agree with me about what the orders actually say about discovery, we can ask the judge to clarify.

On Tue, Mar 12, 2013 at 4:18 PM, Julie Vacura <jvacura@larkinsvacura.com> wrote:

Ha - Discovery is closed. Please advise us the basis for seeking these depositions.

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From: Ha Dao [mailto:hadaojd@gmail.com]
Sent: Tuesday, March 12, 2013 5:16 PM
To: Julie Vacura; Joe Mueller; Heidi Buck Morrison; James McDonald
Subject: DEPOSITION SCHEDULE

Counsel, my client and I would like to work out a schedule for deposition of the following witnesses:

Julie Vacura

From: Julie Vacura
Sent: Tuesday, March 19, 2013 10:27 AM
To: 'Ha Dao'
Cc: Lynne Sabatini; Joe Mueller
Subject: RE: Scheduling Deposition

Ha – My apologies. I just got back last Monday from being out of the country for almost a month and so have a number of cases I am trying to catch up on. I should be able to give you some dates by tomorrow morning. Also, Chris Corcoran is a Deutsche employee and represented by a separate law firm. I will ask my assistant to give you contact information for that attorney.

Best Regards,

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From: Ha Dao [mailto:hadaojd@gmail.com]
Sent: Tuesday, March 19, 2013 10:17 AM
To: Julie Vacura; Heidi Buck Morrison; Chuck Katz; James McDonald; Joe Mueller
Subject: Scheduling Deposition

Counsel, since you have not responded to my request to work out a schedule for deposition, I don't have any choice but to set the schedule unilaterally. If you want to give me any input, please do so no later than the end of today so I can make travel arrangements.

--
Ha Thu Dao, Esq.
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Julie Vacura

From: Julie Vacura
Sent: Tuesday, March 19, 2013 10:31 AM
To: Ha Dao (hadaojd@gmail.com)
Subject: Charles Boyle

Ha – As you probably know, Charles Boyle is in Texas. Are there other depositions in that area that you intend to take? I want to try to coordinate these as much as possible to minimize our (your and my) travel.

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Julie Vacura

From: Julie Vacura
Sent: Tuesday, March 19, 2013 4:51 PM
To: 'Ha Dao'
Cc: Joe Mueller
Subject: RE: Scheduling Deposition

Ha – This will confirm our telephone conversation of this afternoon.

You have asked to depose a number of witnesses regarding the authenticity of the note at issue in this case. They are Erica Johnson-Seck, Brian Burnett, Rebecca Marks, Suchann Murray, JC San Pedro, and Chamagne Williams. I asked that you provide me some detail about what you intend to cover with the proposed witnesses regarding this issue and why you think they have information related to the issue. You indicated you would send me an email addressing each witness.

You have also asked for the depositions of Chris Corcoran and Charles Boyle. Please advise me what information you are seeking beyond that provided at the hearing by these two witnesses. Please identify the topic areas not covered in the hearing related to whether OneWest Bank holds the original note.

Thanks for your attention to this. If you have any questions or comments please let me know.

Best Regards,

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From: Ha Dao [mailto:hadao jd@gmail.com]
Sent: Tuesday, March 19, 2013 10:17 AM
To: Julie Vacura; Heidi Buck Morrison; Chuck Katz; James McDonald; Joe Mueller
Subject: Scheduling Deposition

Counsel, since you have not responded to my request to work out a schedule for deposition, I don't have any choice but to set the schedule unilaterally. If you want to give me any input, please do so no later than the end of today so I can make travel arrangements.

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Julie Vacura

From: Julie Vacura
Sent: Friday, March 22, 2013 1:28 PM
To: 'Ha Dao'
Subject: RE: Deposition schedule

Thanks Ha. I am really jammed up with other matters and cannot get back to you today with a response. I will shoot for Monday. Have a good weekend.

L A R K I N S | V A C U R A

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From: Ha Dao [mailto:hadaojd@gmail.com]
Sent: Friday, March 22, 2013 1:09 PM
To: Julie Vacura; James McDonald
Subject: Deposition schedule

"You have asked to depose a number of witnesses regarding the authenticity of the note at issue in this case. They are Erica Johnson-Seck, Brian Burnett, Rebecca Marks, Suchann Murray, JC San Pedro, and Chamagne Williams. I asked that you provide me some detail about what you intend to cover with the proposed witnesses regarding this issue and why you think they have information related to the issue. You indicated you would send me an email addressing each witness."

Julie:

Suchan Murray executed the appointment of successor trustee which "warrants and represents that as of the date of the appointment, OneWest is the owner and holder" of the note.

Brian Burnett executed the Assignment of Deed of Trust declaring that the assignment was "together with note or notes therein described or referred to"

Erica Johnson-Seck executed the Beneficiary Declaration, declaring that "OneWest is the actual holder of the promissory note"

Chamagne Williams submitted her declaration in support of OneWest's motion for relief from stay attaching a true and correct copy of the note

JC Pedro submitted declaration in opposition of plaintiff's motion for TRO with references to holder and owner of note.

Rebecca Marks certified responses to requests for discovery relating to holder and owner status of note

We will not depose Corcoran.

If you can get me your dates later today, I'd greatly appreciate it. Otherwise, I'll send out subpoenas early next week.

--
Ha Thu Dao, Esq.

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Julie Vacura

From: Julie Vacura
Sent: Tuesday, March 26, 2013 3:51 PM
To: 'Ha Dao'
Cc: Joe Mueller
Subject: RE: depositions

Ha – I will check on witness availability. Are you intending to do them by phone? I will be happy to accept service of notices.

Since you don't have time to talk this week I will further confer with you by email on the witnesses and maybe you can get back to me.

We will make Chamange Williams, JC San Pedro, and Charles Boyle available to you, hopefully on the dates you have proposed.

Brian Burnett no longer works for OWB. I can ask for his last known address according to its records and provide that if you would like.

Rebecca Marks – I looked at the verifications she signed for discovery and cannot see how they relate to the issue of whether OneWest has the original note. If you can point me to the discovery response or responses that go to that issue I will take a look. But otherwise we are declining to produce her for her deposition.

Erica Johnson Seck – As you noted, she signed a beneficiary declaration that says OneWest is the actual holder of the note. To the extent this goes to issues under the DOTA, the court has already ruled on that claim. I do not see how her declaration goes to the issue of whether the note OneWest is holding is the original. If I am missing something please let me know. Otherwise we are declining to produce her.

Suchan Murray – Again as you noted, she signed an appointment of successor trustee saying OneWest was "the holder of the obligation secured by" the trust deed. Again, to the extent the deposition goes to whether OneWest was the "holder" of the note on the date of the appointment, the court has ruled on that. The document Murray signed does not go to the issue of whether OneWest has the original note and so we decline to produce this witness also.

As for Chris Corcoran, I was mistaken in my email to you that we do not represent him for purposes of a deposition. We in fact would but you have indicated you do not wish to depose him after all.

Again, I am happy to further discuss the witnesses above to learn more about why they might be helpful to the issue of whether OneWest has possession of the original note in this case. Thanks Ha.

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From: Ha Dao [mailto:hadaojd@gmail.com]

Sent: Tuesday, March 26, 2013 12:36 PM

To: Julie Vacura; James McDonald

Subject: Re: depositions

Julie. I was cut off yesterday while on hold for you. I am swamped this week and can't chat on the phone.

I am proposing May 6 through 8 for OneWest witnesses. This is the best that I can do on my end. Please let me know if you would be willing to accept service of their subpoenas. Otherwise, I will order service on the witnesses and regrettably, some will be served at their homes.

On Tue, Mar 26, 2013 at 9:41 AM, Julie Vacura <jvacura@larkinsvacura.com> wrote:

Ha – This follows my voice mails left with you yesterday afternoon. I am sorry we missed each other. Please give me a call at your convenience to further discuss the proposed deponents and to try to pick some dates for depositions. Thanks. – Julie

L A R K I N S | V A C U R A

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Julie Vacura

From: Julie Vacura
Sent: Wednesday, March 27, 2013 6:57 AM
To: Ha Dao
Subject: Re: depositions

Ha - go head and issue notices for everyone in case we can come to agreement. I will email later today about those we are still discussing. - Julie
Sent from my Verizon Wireless BlackBerry

From: Ha Dao <hadaojd@gmail.com>
Date: Tue, 26 Mar 2013 21:52:46 -0700
To: Julie Vacura<jvacura@larkinsvacura.com>; James McDonald<strathaar@comcast.net>; Heidi Buck Morrison<hbuckmorrison@rcolegal.com>
Subject: Re: depositions

Julie, I intend to take these witnesses depos in person. I disagree with your analysis on whether these witnesses can provide testimony bearing on the authenticity of the note in your possession and so I will be moving to compel. My client and I are available May 6 through May 8 and we can get all these depositions finished in those three days.

I would appreciate any information you can give me about Brian Burnett.

Please let me know if you have anything else you wish to offer concerning Rebecca Marks, Suchan Murray and Erica Johnson-Seck. The documents that these witnesses executed all refer to the holder and transferee of the note and deed of trust. Therefore, their testimony is relevant and well within the scope of the allowed discover. If we continue to disagree, this exchange should suffice to satisfy the required discovery conference and I will be moving to compel. Let's keep this discussion via email. Thank you.

On Tue, Mar 26, 2013 at 3:51 PM, Julie Vacura <jvacura@larkinsvacura.com> wrote:

Ha – I will check on witness availability. Are you intending to do them by phone? I will be happy to accept service of notices.

Since you don't have time to talk this week I will further confer with you by email on the witnesses and maybe you can get back to me.

We will make Chamange Williams, JC San Pedro, and Charles Boyle available to you, hopefully on the dates you have proposed.

Julie Vacura

From: Julie Vacura
Sent: Wednesday, March 27, 2013 11:13 AM
To: 'Ha Dao'
Subject: RE: depositions

Ha – To my knowledge, Williams and Boyle are both in Austin Texas. I am still waiting to hear if they are available on the dates you gave me. I am tracking down the location of JC San Pedro.

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From: Ha Dao [mailto:hadaojd@gmail.com]
Sent: Tuesday, March 26, 2013 9:53 PM
To: Julie Vacura; James McDonald; Heidi Buck Morrison
Subject: Re: depositions

Julie, I intend to take these witnesses depos in person. I disagree with your analysis on whether these witnesses can provide testimony bearing on the authenticity of the note in your possession and so I will be moving to compel. My client and I are available May 6 through May 8 and we can get all these depositions finished in those three days.

I would appreciate any information you can give me about Brian Burnett.

Please let me know if you have anything else you wish to offer concerning Rebecca Marks, Suchan Murray and Erica Johnson-Seck. The documents that these witnesses executed all refer to the holder and transferee of the note and deed of trust. Therefore, their testimony is relevant and well within the scope of the allowed discover. If we continue to disagree, this exchange should suffice to satisfy the required discovery conference and I will be moving to compel. Let's keep this discussion via email. Thank you.

On Tue, Mar 26, 2013 at 3:51 PM, Julie Vacura <jvacura@larkinsvacura.com> wrote:

Ha – I will check on witness availability. Are you intending to do them by phone? I will be happy to accept service of notices.

Julie Vacura

From: Julie Vacura
Sent: Wednesday, March 27, 2013 12:35 PM
To: 'Ha Dao'
Subject: RE: depositions

Ha – I have again reviewed your client's motion, the response of OneWest, and the Court's order reopening discovery. Your client's request was very specific – to have an expert examine the note in the possession of OneWest to determine whether it is the original note. He did not request additional discovery regarding any other issue and did not ask for any additional depositions.

Both your client and the Court noted that two versions of the note were presented at the January 31 hearing and you both referred to the testimony of Mr. Boyle regarding the two versions of the note. As a result we are making Chamagne Williams available because she signed the declaration attaching the second version of the note presented at the hearing and Charles Boyle for further questions regarding the two versions of the note.

The court also discussed that OneWest "repeatedly presented to the Court what purports to be a photocopy of the original promissory note accompanied by declarations made under penalty of perjury that the original was in their possession." Because Charles Boyle and JC San Pedro may have testimony related to this comment by the Court we are making them available for depositions.

The Court stated, "plaintiff should be given the opportunity to test defendant's claims that the *note presented to the Court on January 31, 2013*, is the original promissory note that plaintiff signed in January 2007." The Court found, "there remains an issue of fact regarding whether defendants have actual possession of the original, signed promissory note *at this point in time*." The court ordered plaintiff have "discovery regarding the authenticity of the note *presented at the evidentiary hearing*."

I interpret the court's order to say that Mr. McDonald may have discovery that will prove or disprove the authenticity of the note presented to the Court at the January 31, 2013 hearing. I cannot see how Murray's or Seck's declarations that OneWest held the note on January 27, 2010, with no attestations regarding authenticity, goes to the issue of whether OneWest presented to the Court on January 31, 2013 the original signed note. Ms. Marks signed verifications that do not relate to the issue of whether OneWest presented the court with an original note. We continue to decline to present these witnesses. I am happy to discuss the issue further if you have any additional comments.

I am still happy to accept notices for each witness you intend to depose (except, of course, Burnett).

Best Regards,

L A R K I N S | V A C U R A

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CERTIFICATE OF SERVICE

I am employed in Multnomah County, State of Oregon. I am over the age of 18 and am not a party to the within action; my business address is 621 SW Morrison St., Suite 1450, Portland, Oregon 97205.

On April 5, 2013, I served the following document(s) described as:

DECLARATION OF JULIE R. VACURA IN SUPPORT OF RESPONSE TO PLAINTIFF'S COUNTERMOTION TO COMPEL DISCOVERY REGARDING AUTHENTICITY OF THE NOTE

on the party or parties listed on the following page(s) in the following manner(s):

- BY HAND DELIVERY:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be delivered by messenger to the street address(es) indicated on the attached service list.
- BY FEDERAL EXPRESS:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be delivered by Federal Express to the street address (es) indicated on the attached service list.
- BY FIRST-CLASS MAIL:** For each party, I caused a copy of the document(s) to be placed in a sealed envelope and caused such envelope to be deposited in the United States mail at Portland, Oregon, with first-class postage thereon fully prepaid and addressed to the street address(es) indicated on the attached service list.
- BY FACSIMILE:** For each party, I caused a copy of the document(s) to be sent by facsimile to the facsimile number(s) indicated on the attached service list. If this action is pending in Oregon state court, then printed confirmation of receipt of the facsimile generated by the transmitting machine is attached hereto.
- BY E-MAIL:** For each party, I caused a copy of the document(s) to be sent by electronic mail to the e-mail address(es) indicated on the attached service list. If this action is pending in Oregon state court, then I received confirmation that the e-mail was received.
- BY ECF:** For each party, I caused a copy of the document(s) to be sent by electronic mail via ECF to the e-mail address(es) indicated on the attached service list.

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

/s/ Julie R. Vacura

Julie R. Vacura

Ha Thu Dao

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Attorney for MERS